

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: BAIR HUGGER FORCED AIR
WARMING DEVICES PRODUCTS
LIABILITY LITIGATION

MDL No. 15-2666 (JNE/FLN)

ORDER

Genevieve Zimmerman, for Plaintiffs.
Monica Davies, for Defendants.
J. Randall Benham, for third-party Scott Augustine.

THIS MATTER came before the undersigned United States Magistrate Judge on June 1, 2017, on the parties' joint motions regarding continued sealing (ECF Nos. 509, 510, and 511). By their joint motions, the parties agree that docket entries 317, 319, 321, 322, 323, 324, 325, 326, 327, 328, 330, 331, 332, 333, 334, 335, 336, 338, 339, 341, 346, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 378, 379, 380, 381, 383, 384, 386, 387, 439, 440, 442, 399, 402, and 403, that were initially filed under a temporary seal pursuant to Local Rule 5.6(d)(1), should be unsealed. Accordingly, these documents will be unsealed.

In addition, the parties agree that all or part of the information in docket entries 444, 445, 446, 448, 450, 452, 455, 457, 460, 462, 464, 466, 468, 470, 472, 474, 476, 478, 481, 483, and 485 should remain sealed. As the Advisory Committee Note to Local Rule 5.6 observes, the newly implemented Local Rule is designed to reduce the amount of information filed under seal. The Advisory Committee goes on to blame the over sealing on confusion over the difference between protective orders and sealing orders. "Even if such information is covered by a protective order, that information should not be kept under seal unless a judge determines that a party or non-party's need

for confidentiality outweighs the public's right of access." L. R. D. Minn. 5.6 advisory committee's note.

The joint motions referenced above, do not provide the Court with enough information to make the decision the Advisory Committee suggests must be made regarding docket entries 444, 445, 446, 448, 450, 452, 455, 457, 460, 462, 464, 466, 468, 470, 472, 474, 476, 478, 481, 483, and 485. The joint motions simply state that the seal should be maintained over these docket entries because the documents contain information designated as confidential by a non-party. While such designation is a sufficient reason to initially file such documents under temporary seal, the Court concludes that more is required to maintain the documents under a permanent sealing order. Specifically, Local Rule 5.6 requires that the parties provide the Court with sufficient information for it to decide whether the need for confidentiality outweighs the public's right of access to the material. *See* L. R. D. Minn. 5.6 advisory committee's note. Without such information, the Court concludes that the seal over this material must be lifted.

The parties disagree as to the propriety of maintaining the seal over docket entries 308, 311, 316, 329, 337, 340, 342, 343, 344, 345, 347, 377, 382, 385, 441, 395, 397, 400, 401, 404, 413, 416, 417, 418, and 419. After reviewing these documents, the Court concludes that maintaining the seal over docket entries 308, 311, 395, 397, 400, 401, and 404 is not warranted in this case. *See id.* Conversely, the Court concludes that docket entries 316, 329, 337, 340, 342, 343, 344, 345, 347, 377, 382, 385, and 441 shall remain under seal.

Based upon all of the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that the parties' joint motions regarding continued sealing (ECF Nos. 509, 510, and 511) are **GRANTED in part and DENIED in part**. Docket entries 308, 311, 317, 319, 321, 322, 323, 324,

325, 326, 327, 328, 330, 331, 332, 333, 334, 335, 336, 338, 339, 341, 346, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 378, 379, 380, 381, 383, 384, 386, 387, 439, 440, 442, 399, 402, 403, 413, 416, 417, 418, 419, 444, 445, 446, 448, 450, 452, 455, 457, 460, 462, 464, 466, 468, 470, 472, 474, 476, 478, 481, 483, 485, 308, 311, 395, 397, 400, 401, and 404, identified in the joint motions, will be unsealed. Docket entries 316, 329, 337, 340, 342, 343, 344, 345, 347, 377, 382, 385, and 441, identified in the joint motions, shall remain under seal.

DATED: September 19th, 2017

s/Franklin L. Noel

FRANKLIN L. NOEL

United States Magistrate Judge